



**WISCONSIN SUPREME COURT
WEDNESDAY, MARCH 2, 2005
1:30 p.m.**

03-1690-CR State v. Tyrone L. DuBose

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a conviction in Brown County Circuit Court, Judge Sue E. Bischel presiding.

This case centers on a procedure that police sometimes use to identify crime suspects. The procedure is called a “show-up,” and involves letting an eyewitness look at an arrestee very soon after a crime has been committed and asking the eyewitness if the arrestee is the person who committed the crime. The Supreme Court will decide whether this method of identification is impermissibly suggestive, as the defendant in this case argues.

Here is the background: On Jan. 9, 2002, Timothy Hiltzley left the Camelot Bar in Green Bay with a friend and met two men on the street whom he thought he recognized. Hiltzley had been drinking and “had a buzz on.” The group went back to Hiltzley’s apartment to smoke marijuana. Shortly after they entered the apartment, one of the men whom they had met on the street pulled a gun on Hiltzley and ordered him to empty his wallet. Hiltzley complied, and the two men fled on foot.

A chase began and soon police were summoned. Hiltzley described the men as African-American, one about 5’6” and one a bit taller. A neighbor who had seen two men run out of Hiltzley’s home told police that one of them had been wearing a large flannel shirt with a hood. One officer spotted two men walking about a half block from Hiltzley’s apartment. He could not determine their race, but saw that one was wearing a large, hooded shirt. When he approached them, they ran. The canine unit was called, and a dog sniffed out a man – Tyrone L. DuBose – in a backyard. He told the officer he was walking home from his girlfriend’s house, and the officer later testified he was unsure whether DuBose was one of the men he initially had spotted. DuBose was not wearing a hooded shirt.

The officer handcuffed DuBose and placed him in a squad car and Hiltzley was permitted to view him through the window. Hiltzley said he was “98 percent” sure the man in the car was the one who robbed him. Hiltzley again viewed DuBose through a two-way mirror at the police station and again said he was the robber.

DuBose was charged with armed robbery and he filed motions challenging the use of the identification procedure, which he called impermissibly suggestive, and the arrest itself – which he argued was without probable cause. His motions were denied and he was convicted after a jury trial.

In the Court of Appeals, DuBose renewed his argument that the show-ups were too suggestive and that the results of them should not have been admitted into evidence. The Court of Appeals disagreed, affirming DuBose’s conviction.

Now, the Supreme Court will reexamine the standards for eyewitness identification to determine whether show-ups are permissible.